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AUTHOR Heath, Shirley Brice; Mandabach, Frederick
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ABSTRACT

The status of pluralistic languages in the United States may be traced back to attitudes and policies developed in medieval England, where Norman French, Old English, and Latin were each associated with certain contexts and certain populations. English finally achieved dominant status in all domains, but this achievement came about through cultural and societal, rather than legal, forces. In the United States as well, the status of English was achieved without official declaration. The early history of the United States contains few instances of attempts to restrict the use of other languages (with the exception of the American Indian languages). In fact, up to the end of the Civil War, the United States could well have been called a multilingual society. Toward the end of the 19th century and into the early 20th, many state laws were passed restricting the use of languages other than English, especially in education. Two reasons for this shift were the growing tendency to regard the public school as an institution to create a unified conforming citizenry, and the emergence of "subversive speech" as a crime commonly before the courts. In current discussions over the creation of a national language policy, policy makers should be guided less by a past of restrictive legislation than by a sense of the history behind that legislation. (JB)

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Shirley Brice Heath
Graduate School of Education C1
University of Pennsylvania
Philadelphia, PA 19104

And

Frederick Mandabach Esq.
Claremont Men's College
Claremont, CA 91711

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Within the first decade after passage of the Bilingual Education Act of 1968, "national language policy" became a topic of debate for the U.S. public. Congress, in assessing the results of a decade of federal funding of bilingual education, was asked to consider bilingual education as part of a general policy of accommodation to bilingualism in legal, medical, and other social-service settings. The Presidential Commission on Foreign Languages and International Studies, formed in 1978, repeatedly heard the public urge that it recommend a comprehensive language policy for legislative consideration. The 1978 Executive Order on Plain English set clear writing as a governmental goal. However, federal agency rulings and state legislation designed to make public information available in cohesive, clear, and concise prose were difficult to implement in the absence of a comprehensive official policy on how to judge and accomplish "plain English." In each of these three cases, a response to piece-meal efforts to choose and change the oral and written language has led some citizens to call for an official national language policy, one which would decide the status of English vis-a-vis other languages and provide citizens with standards for their public language.

Those who think seriously about enactment, implementation, interpretation, and enforcement of the law or laws necessary to achieve such a policy must, however, consider the history of how language status decisions have been made in the United States. The legal history of legislative and judicial decisions related to language in the United States is reviewed here in an effort to answer the question of what has happened in the past when language issues reached the federal level of decision-making. A majority of current efforts to obtain a national language policy are based on the belief that it will diminish discrimination based on language; it is therefore important to know whether or not there have been past legal efforts either to sanction or to promote linguistic discrimination. It is also critical for those considering a national

language policy today to have an historical perspective on the intentions and principles reflected in any laws which may have attempted to control the language behavior of U.S. citizens, and to be able to place these laws in the context of events at the time of their passage.

The philosophical and legal heritage from England's history helped influence language decisions in the colonial and national history of the United States. Thus, for the origins of legal considerations of language in the United States, one must go back many centuries. The story of language status achievement for English since the time of the Norman Conquest is not a simple one, and there are many reasons for the complexities of this history. Initially, there is the problem of determining the situation in which to define the terms status and English. Each of these has different definitions, depending on the level of interaction at which it is being viewed. For example, status determination in the language planning literature is usually taken to mean decisions related to choice of official language for the nation's government and public affairs. However, in the history of English, there have been occasions when debates have centered around the status of English as a language to be spread to other nations, as well as within a single nation in competition with other languages, such as French, Welsh, or German. Status decisions have also been debated both for and at local, regional, and national levels on the choice of language to be used in business, educational, legal, and religious institutions. Distinctions have sometimes been made at the international, national, regional, and local levels between the spread of English in both the written and spoken channels or in only one of these channels. To further complicate the determination of status, there have been different conceptions of the term English. For some decision-makers, English has meant a generalized language form, without regard to its varieties. For other decision-makers.

English has meant only a standardized, codified norm, legitimated through its literary forms.

The British Background

This paper is an attempt to examine these different approaches to determining the status of English in the United States and England, but most particularly in the United States. Heath 1976a, a review of the language status achievement of English in the British colonies of America, pointed out that both decision-making institutions and processes were conceived in the Old World, but born and nurtured in the New World (1976a). It is necessary, therefore, to look briefly at ways in which English became the mother tongue of Great Britain after 1066, the time of the Norman Conquest. After 1066, Norman French became the standard language of Parliament and the courts, and the medium of common daily communication for the upper classes and polite society. Latin was the language of scholarship and legal writings. English, initially reputed to have been relatively unknown among the rulers, continued as the popular tongue of the people. The absence of any official status for English helped provoke King Henry III's English Proclamation issued in 1258. The proclamation railed against monoglot French speakers,but achieved nothing in giving English an improved status. However, status promotion through increased use came about as poets, preachers, and some officials of the law quietly used English in their writings and argued for the practicality of their deed. In 1300, a poet justified translating his work into English by noting:

> I have normally read French verses everywhere here; it is mostly done for the Frenchman--What is there for him who knows no French? As for the nation of England, it is an Englishman who is usually there. It ought to be necessary to speak mostly the speech that one can best get on with. Seldom has the English tongue by any chance been praised in France; if we give everyone their own language, it seems

> to me we are doing them no injury. I am speaking to the English layman.... (translated from Cursor Mundi in Cottle, 1969:17).

By the end of the twelfth century, a large portion of the upper classes had acquired English as well as French; bilingualism was common in this group. By the mid-thirteenth century, English had spread to an increasing variety of uses across classes. By the end of the fourteenth century, an increasing number of legal and quasi-legal documents were written in English, though as yet, it had no official status for oral use in the courts. English had become the mother tongue of Englishmen, the general mother tongue of all classes. French was the language of artistic display, an evidence of learning and proper social contacts. By the end of the Middle English period (1100-1500), English was the dominant language of Parliament, English grammar was taught in schools, and Chaucer's Tales had widely publicized, if not entirely legitimated, English as a literary language. Few among the nobility knew French, and Anglo-Norman literature had been superseded by English writings. Except for higher education and the law, English had achieved recognition as the norm; in literary art, schools, daily communication in the business world, and social exchanges across classes, English had gained a secure status.

Only in the universities and the courts was little or no status given to English. Latin was the medium of universities. In the courts, the status of English for oral and written legal matters varied at different levels of legal action across the Middle and early Modern English periods. By the end of the thirteenth century, Law French (sometimes call Norman-French or French-Norman) was the undisputed oral language of the courts as well as the code of legal literature. Throughout the Middle English period, French predominated as the language of the law. In the late thirteenth century, the practice of law became a profession, and lawyers over the next centuries consistently attempted to protect the language of their profession--law French--from changes,

or threats imposed from outside. However, by 1356, English was allowed as the language of oral court proceedings at local levels. In 1362, the Statute of Pleading declared that if the oral language of the court remained French, the people of the King's court had "no knowledge or understanding of that which is said for them or against them" (36 Edward III, st. I c.15, cited in Holdsworth 1923:II,477). Parliament's growing influence and its use of English spread the notion of English as a language of legal-like situations, and by the end of the fifteenth century, an increasing portion of the oral language of courts was English. Nevertheless, pleadings (formal writings) remained in French, but arguments at the bar could be carried out in English. By the sixteenth century, written pleadings in the common law courts were written in English. The Chancery law, or law of the Church, was in English, though specialized terms from Law French were plentiful. In 1650, Parliament passed An Act turning the Books of the Law and all Proces and Proceedings in Courts of Justice, into English. However, struggles ensuing from the Act were bitter: lawyers resisted, the statute was alternately validated and killed in shifts of political power during the seventeenth century, Latin and French each made intermittent gains in either specialized acts of the court or the written law. In 1731, an English-for-lawyers law was passed which called for all proceedings in courts in Great Britain to be "in the English tongue and language only, and not in Latin or French, or any other tongue or language whatsoever...." (cited from Records in English, 1731, 4 Geo.II, c. 26 in Mellinkoff, 1963:133-34). Major

resistance to the shift to English came from those who felt it made lawyers "illiterate" and did not help increase the knowledge of the public on matters of law. The law was so weakened in revisions made before its enactment that its original intent was all but lost.

However, by the end of the eighteenth century, English was the accepted language of the law, though codified with a heavy retention of terms and styles both Latin and Law French. English was the language of Parliament, and though there were many diverse dialects throughout England, the tongue of Englishmen was clearly English. The same was not clearly the case for other parts of Great Britain. Subjects in Wales and Ireland were still to be convinced English was the language of Great Britain. In the early sixteenth century, Henry VIII began an attack on Irish customs, religion, laws, and language. Agreements drawn up between individual Irishmen and the English government during this period charged Irishmen to change their names, to speak English, and to adopt "English habits and manner." The same efforts were directed against Wales: all legal proceedings were to be in English, and offices filled by those who spoke English (Heath 1976a, Nichols 1977).

In England, once English seemed established, reformers turned their efforts toward setting a standard norm of English. Schools characterized grammar as a set of analytical procedures and promoted grammatical categories as logical or quasi-logical (Michael 1970). In the Middle English period,

the close connections between grammar and language in use were not obscured; the teaching of grammar was related to reading, explanation, and criticism. However, by the seventeenth century, grammars of English emphasized correctness of usage and pronunciation in an idealized norm. By the eighteenth century, a seeming fascination with language, grammatical correctness, and changes in language was reflected in the popular media. Magazines condemned "the poverty of language" said to circumscribe thought, and to promote improper behaviors and prejudices. Language was a popular topic, and the pages of fashionable magazines covered topics ranging from chemical nomenclature to dialects and foreignisms in English(cf. Hanes 1940).

In connection with this popular support urging propriety in language on discerning people of all Great Britain, there was a strong effort to institutionalize the standards of speaking. An academy for regulating speech was proposed consistently and enthusiastically between 1712 and 1800 by many leaders of English society and politics, including Lord Chesterfield, Thomas Sheridan, Lord Monboddo, and Dean Swift (Read 1938). Samuel Johnson's dictionary became the instrument, if not the institution, which "fixed" the language during this period. It did so without support from a national language academy, though publication and promotion of such a dictionary were viewed as major tasks of any proposed academy. However, had official publication of a dictionary come about, such a work was not to be judged as dictation of choice to Englishmen. One proponent of the academy made this point very clear:

> ...lest you should think that I would indeavor to force Men by Law to write with Propriety and Correctness of Style, I must declare, that I mean only to force them to spell with Uniformity.... and I can not but esteem the English Language to be of such Consequence to Englishmen in general that a proper Act, for the Improvement and Preservation of it, would do Honor to an English Parliament. (Observations upon the English language....1752, cited in Read 1938:145-146).

This comment highlights two critical factors which characterize language status achievement in England. The first is the view that Englishmen must not be forced by law in their language choices; the second is the conviction that discerning citizens will, of their own volition, make proper decisions about language in order to do honor to their identity. In England, Englishmen had to come to a choice of English and use of proper English through their individual efforts to improve themselves. Exposure to good models, study of manuals of speaking, and diligent attention to prescribed grammar rules were behaviors which gave evidence of good character, taste, and judgment. Rejection of a national academy underscored the view that achievement of status for the English language was not a matter for Parliamentary statutes, but rather one of individual choice for socially-minded individuals. Those born into classes or geographical environments which did not offer exposure to the standard norms of language were to expose themselves to proper speakers, and they had to decide as individuals to adopt the prestige dialect. Failure to make this choice left them open to charges of defaming or downgrading the nation, and showing evidence of an absence of self-control, failure to use logic and reason, and a lack of diligence in pursuit of good. Today, in spite of numerous efforts to make the status of English 'official' in England and to prescribe officially the variety of English which is the national norm, only two statutes survive. One of these requires Crown writs and incidental papers to be in English, the other requires sailors on British ships to have a knowledge of English (Crown Writs to be in English, 1868, 31 & 32 Vict., c. 101, s. 90 and Prohibition of Engagement of Seamen..., 1906, cited in Mellinkoff 1963:4-5.)

The United States Legacy

The achievement of the status of English in England came about not through statute, but through cultural and societal forces. Englishmen did not see language as a suitable overt instrument of control to be wielded by the state over its citizens. In England, in the years following the Norman Conquest, official rulings and statutes did not establish English; English became established through the choices of the population, and in large part through its use by the literary elite. Even within the law, mandates did not succeed entirely in removing Latin and Law French from legal usage, either oral or written. The law profession worked to maintain the specialized language of its profession, because it served certain needs and was appropriate for its institutions of learning and practice. There was no doubt, however, that Englishmen viewed English as the language which should be chosen by discerning citizens, and that the English modeled by the upper classes and prescribed as correct in grammar books should be used by English speakers. Those who did not choose either English or the proper form of English left themselves open to criticism and social exclusion.

The United States inherited the English reluctance to mandate language choice or to regulate language through political decisions. England extended this reluctance to legislate choices for its own citizens to the indigenous of its New World colonies (Heath 1976a). Unlike leaders of the Castilian empire in the New World, England's colonial administrators consistently failed to consider language as the instrument of forced assimilation. Language was viewed as something changed through exposure of speakers to appropriate learning environments and models, not through imposition of political force. In short, for Englishmen, the English language and

its culture were the great avenue by which people could, if they so chose, arrive at valuable knowledge, logical reasoning, acceptable ways of conducting one's life, and an advancement in social status.

In England, those born to wealth acquired the prestigious form of the language through the company they kept. In the United States colonies, those who obtained land and became planters, or those who became wealthy through business opportunities, could not count on exposure to insure proper language choice for their sons. Some sent them to England or the Continent to be educated; those who provided tutoring for their sons here insisted they use English textbooks and study the pronunciation manuals most frequently used in England. Throughout the Revolutionary period and in the early national history, an "English education" was stressed, and recalcitrant students of grammar were reminded language was a mark of "breeding." (cf. Farish 1957, xvii). The lower classes had no such exposure or opportunities on an extended basis, since schools were relatively scarce until well into the nineteenth century. They were forced to seek out proper books and company, using conversational partners as models. Women, though formally excluded or neglected in institutional educational opportunities, were often judged especially adept at studying English lessons and effectively putting these into practice in conversation and debate (Heath 1976b).

Within the United States, therefore, the status of English was achieved as it had been in England, without official declaration and without the help of an official academy. Books, models, and circumstances were the status builders for English in its standard variety. In spite of U.S. efforts to establish an academy of language, well-placed officials rejected the idea, and no such academy at the national level developed

(Read 1936, Heath 1976c). Instead, Noah Webster's speller, grammars, and dictionary, and copious writings in the public media promoted the idea of an English for America. Often sold in a triplet package containing the Bible, the blue-backed speller, and a grammar, Webster's books filled a need for information on language desired across regions and classes. American periodicals of diverse fields also included articles, brief notes, and comments on language; the problem of achieving a characteristic norm without an internationally recognized literature was an issue of recurrent concern (cf. Free 1968: 172).

Among the issues debated in these periodicals was the relative standing of English with respect to the Classical languages and modern foreign languages. Bilingualism and even multilingualism were praised and seen as desirable goals of education and association. Though there was a general tolerance for other languages and a recognition that they provided access to information not available in English, the push for an English education, often defined primarily in terms of its being offered in English and including heavy doses of spelling, grammar, and literature, was consistent and firm. English was recognized as "mandated" by general usage across vocations and workaday situations in the public world. Yet myths have survived which suggest that either French or German almost became the national language.

One myth has promoted the idea that only one vote kept German from being the national language in the late eighteenth-century legislature. The accurate history of this incident known as the "Muhlenberg legend" is that a group of Virginia Germans requested that some laws of the United States be issued in German as well as English. A congressional committee favored the proposal, but when the issue came to a House vote, it was rejected

42 to 41. Frederick August Muhlenberg, a German-speaking Pennsylvanian may have cast the deciding vote, but congressional records do not allow precise determination of this (Heath 1977). Other legends, current at both the time of the Revolution and in the mid-nineteenth century suggested that French would become the language of the United States. Sir Herbert Croft, a British etymologist, reported in a letter of 1797 that Americans had once considered "revenging themselves on England by rejecting its language and adopting that of France" (Croft 1797). American and British journalists in the mid-nineteenth century, a period of extreme cultural insecurity for Americans, picked up stories of the uncertainty of Americans about the dominance of their tongue over French or German (cf. Bristed 1855). However, in spite of these myths portraying French, German, or Latin as the national tongue, there was never serious doubt about the issue, and there was never any official declaration of the status of English.

How then did English achieve its status? In the colonial and early national periods, the question of the status of English resolved itself at local community levels, as individuals chose the language most necessary to economic survival and their own religious and social goals. Institutions provided choices; universities and colleges initially emphasized the Classical languages as subjects of study, but provided the majority of instruction in English. In the first half of the nineteenth century, English grammars and other writings on language stressed language uses (rhetoric, conversation) and were not nearly so vehement on prescribing correctness as were similar types of material after the mid-century (Drake 1977). Webster, though today associated with prescriptivism in the public mind, urged the descriptive approach to grammar which was reflected in numerous grammars of the early nineteenth century:

> ...grammar is built solely on the structure of language.... Grammars are made to show the student what a language is—not, how it ought to be. They are compiled for boys, in schools, rather than for men of science, who ought to quit grammars which are the streams, and mount to the source of knowledge, the genuine construction of the language itself (italics in the original) (Webster 1798:6).

The choice of English over other languages and a preferred norm of English usage were matters of faith in the prevailing good judgment among the U.S. citizenry. There were, with the exception of American Indian policies, few efforts to restrict uses of other languages; instead, they were recognized as resources. In addition, diversity in language structures and uses was seen as a valuable asset (Heath 1977). In cities such as St. Louis, Cleveland, and New York, people who were reluctant to take their children out of work to place them in schools were offered bilingual education or instruction in their mother tongue as incentive to school attendance (Kluwin, forthcoming; Tyack 1974). Private schools taught in the language of those groups which supported them (Kloss 1977:6-167). Authors of folk literature of the period almost flaunted the dialect variation of the United States. By mid-century, however, these views were starting to shift. The United States began to look for ways of restricting variety, of cutting back on the resources of language varieties in the United States; the drive for uniformity and conformity in speech which reached its peak in the late nineteenth century had begun.

Numerous historical events related to language helped fuel the drive. Webster's dictionary was now being widely and noisily distributed by Merriam Webster company. Publicity for the dictionary (and news coverage of questions surrounding authorship, rights, and editions) put the book fully in the public eye (e.g. A Gross Literary Fraud....1854, Have We a National Standard? 1854). The common school was becoming an expected institution across the country; compulsory attendance laws were being debated in state legislatures. Urbanization and industrialization were bringing the different groups of America, many of which had earlier settled in rural areas and made their living in independent ventures, together for economic reward in urban industries.

By the end of the Civil War, the immigration of groups whose looks and speech were very different from the idealized norm of "American" prompted widespread efforts, legal and social, to achieve linguistic uniformity and conformity. Composition and grammar books increasingly stressed learning to speak English correctly and leaving aside all other varieties. In a seeming "search for order" (Weibe 1967) which prevailed at the end of the century and into the next, state laws controlling the teaching of foreign languages and the use of particular languages in teaching proliferated (Kloss 1977:68 ff). Literacy rulings became more and more stringent, eliminating more and more voters of different language backgrounds and competencies from the ballot box (Heath forthcoming a). For all the power of precedent from England and habit established during the first century of nationhood, Americans began to legislate language in both the states and the territories. The history of relations with Puerto Rico, Hawaii, the Philippines, and the other territories of the United States from the late nineteenth century tells the story of a U.S. government intent on implanting English and diminishing the status of other languages as quickly as possible.[1] Contrary to the British mold and the seemingly established American way, forces at the federal level wanted to mandate language status and choice for the territories. State and local levels wanted to mandate language status and choice for their communities. Social institutions changed to reflect the new conservatism. Educational institutions made it clear that language use was a mark of character, taste, intelligence, and reason. In a society suddenly fearing its diversities might be too great to control, there were greater and greater needs for being able to predict the behavior and thoughts of one's neighbor. The choice of English and adherence to norms of correctness became marks openly stressed as

those of good citizens, good Americans, and predictable rational neighbors (Piché 1977, Heath, forthcoming b). Legal statutes and cases, grammar texts, and records of school boards and superintendents confirm this shift in society by the last decades of the nineteenth century. The findings may generally be summarized:

1) Until the mid-nineteenth century, very few stipulated restrictions on the teaching or use of languages other than English existed. The language used in instruction was not determined through political judgments, but in accord with the desires of parents and the economic resources of state and local school boards.

2) Increasingly throughout the latter half of the nineteenth century, English grammar and composition books and the popular press promoted the value of a standard English, and the use of English by all citizens. These skills were promoted as marks of "good American citizens."

3) Nevertheless, the foreign language press, local organizations, and private schools continued use of languages other than English. Private and parochial schools in numerous states taught in different languages, and some public school systems offered bilingual instruction across the curriculum.

4) The policy of publishing state laws in languages other than English was continued in numerous states. The practice of distribution of laws in the language of diverse groups of the population had been initiated by the Constitutional Convention, which published its proceedings in English, German, and French. In states which did not wish to pay for publication of laws in other languages, state legislators often reminded their fellow congressmen that the foreign language press would take on this task and spare the states the expense.

5) Before 1890, only three states (Connecticut, Massachusetts, and Rhode Island) required that English be the language of instruction in the schools. In 1890, New York, and seven mid-western states mandated instruction in English in private schools. In Wisconsin, opponents to the rule were able to have the act repealed.

6) In contradistinction to laws prohibiting the use of languages other than English for instruction in schools, laws were also passed which prohibited the teaching of other languages as subjects. In the 1870's, some mid-western states argued the economic basis of laws prohibiting the teaching of foreign languages; state educational funds should go to more important

> tasks. During World War I, foreign languages as subjects of instruction were forbidden on other grounds: knowledge of a foreign language was believed to be "clearly harmful."

It is somewhat ironic that in discussions of language status achievement, points 5 and 6 above have received the greatest attention. In particular, treatment of the Lau v. Nichols case[2] (e.g. Teitelbaum and Hiller [1977])and the numerous considerations of its effect on the rights of linguistic minorities have made much of these earlier laws restricting language rights. What has often been lost in the mass of commentaries regarding these laws and the court cases they provoked is that three Supreme Court cases overturned all the lower court rulings upholding the restriction of the use of foreign languages.

In Nebraska the Siman Law of 1919 prohibited the teaching of foreign languages to children below the ninth grade. The purpose of the statute was that "the English language should be and become the mother tongue" of children of immigrants and all other children reared in Nebraska.[3] Robert Meyer, a parochial school teacher, appealed his conviction for teaching German to a child who had not yet passed the eighth grade. The U.S. Supreme Court ruled in 1923 that the statute violated the Fourteenth Amendment. The court declared that the right of a teacher to teach a foreign language and the right of parents to have their child so instructed were rights protected by the Constitution.[4]

Iowa and Ohio passed legislation similar to the Siman Law. The Iowa law required that English be the medium of instruction in the schools.[5] Ohio also passed a law requiring that English be the language of instruction, and went even further by declaring English the official language of the State.[6] Nebraska reworked the Siman Law in an effort to avoid constitutional conflicts.[7] Once again the U.S. Supreme Court in 1923 ruled that these laws violated rights guaranteed by the Fourteenth Amendment.[8]

A 1922 Oregon law provided that all children ages eight through fifteen had to attend public schools.[9] One effect of this act was to deny instruction

in languages other than English since instruction in other languages had been available in private schools. However, in 1925, the U.S. Supreme Court struck down the law on the grounds that the State had no general power "to standardize its children by forcing them to accept instruction from public teachers only."[10] The State's method of forcing assimilation was found in violation of the Fourteenth Amendment.

In 1920, the foreign language schools of Hawaii, established primarily by Asians and conducted in Chinese, Korean or Japanese, were the subject of restrictive legislation.[11] The act imposed fees, limited hours, and restricted the required teacher's permit to those who possessed a good knowledge of English. In 1927, the U.S. Supreme Court, noting that the law would probably destroy the schools, ruled that the law violated the due process of law protections of the Constitution. Since Hawaii was a territory rather than a State, the ruling made clear that the rights of parents and students were protected from acts by the Federal government as well as by the States. On the face of it, the U.S. Supreme Court in these decisions moved to maintain a legacy of restraint on imposing English as an overt instrument of control, as a tool of forced assimilation.

If law has not created and maintained the status of English, what has? More specifically, what forces have created and maintained the public belief that throughout our past, English has had an official or quasi-official status somehow linked to the national good, and institutions have been and are, therefore, bound to promote the use and teaching of good English in speaking, reading, and writing? Edwin Newman attacks the logic, reason, and loyalty of citizens who do not speak "a civil tongue." The general citizenry is fearful of bilingual education as a new divisive force

in the society, one which has never before appeared, because prior foreign-language speakers acquiesed to the use of English. The use of languages other than English and the failure of students to accomplish adequate skills in reading, writing, and speaking English are held up as new problems, problems citizens resent having to deal with in a period in which they see all problems as public problems to be solved through increased expenditures. In short, the socialization of those who cry out against these problems has led them to believe that the current language situation is an aberration running counter to the past. What forces, intellectual and sociocultural, have prompted these beliefs?

Two such forces of the past half century are suggested here. The first of these is the role society determined English should play in the curriculum and in the judgment of individuals; the second is the degree of intensity of legal activities related to abridging the freedom of speech. In many ways, the second may be said to be influenced by the first, but the second was also fostered during the period from 1919 through the 1950's by a fear of "the foreign element," based primarily on the belief that it did indeed threaten the nation.

During the period between 1860 and 1920, American society regarded the public school as the institution to create a unified conforming citizenry. To support the school in its efforts to organize the linguistic and cultural knowledge and behavior of U.S. citizens, an expanding network of training institutions, publishing houses, and professional organizations developed. Acquisition of the use and appreciation of a standard English became a primary goal for young Americans in the education system. The "right" language was both a fundamental instrument and a necessary symbol of knowledge and character. There is no scholarly study of the intellectual and social history of the teaching of English in the United States. Such a history does exist for England (Mathieson 1975), and its pages tell a story of powerful socialization of and by teachers of English similar to that of the U.S. As "preachers of culture," English teachers have been and are trained to pass on their subject and its related skills with a strong sense of moral purpose. Texts and training programs have emphasized that learning English well prepares one for life and for exhibiting all manner of positive characteristics. The goodness of the speech gives evidence of the goodness of the speaker. English teachers have claimed that ethics and aesthetics are transmitted through the "laws of the language," and correct grammar has close connections with "correct thinking" (Heath forthcoming). Guarding one's use of language helps one guard the opinions expressed. Proper language was identified in the American mind as a semi-patriotic symbol. Since the late nineteenth century, these views have been perpetuated; the present generation of Americans has been trained in these views as were their teachers and their teachers before them.

The second contributing factor to a general climate of opinion more restrictive in its approach to language than our national laws has been

the free speech litigation of the past fifty years. Prior to 1919, there were, for all intents and purposes, no First Amendment cases in the U.S. courts. However, during the very period (1919-1925) in which states scrambled to pass laws demanding English only in their schools, at the ballot box, and as a requirement for employment, courts sentenced over 1,000 people to jail for subversive speech. In these cases, prosecution and conviction were based on the notion of inchoate crime, i.e., words were said which made people fear something would happen, although no action ensued. The speech people used made them socially dangerous. The thousands of cases which went to trial in the period between World War I and the late 1950's had the support of a general prevailing belief in the causal relationship between speech and behavior. Justice Holmes attempted to objectify this view of the link between mental phenomena and behavior by proposing the "clear and present danger" doctrine. Judicial decisions of the 1920's having to do with speech critical of national policies emphasized the power of the state to restrain free speech because of its concern with the risk of crimes and disorder ensuing from speech (Gunther 1976: ch. 6 & 7). Decisions throughout the period were based on the view that language is a predictor, or at least an indicator, of behavior. Increasingly during this period, the phrase radical came to be alien radical, and alien language was seen as especially likely to foretell radical behavior.

These First Amendment cases peaked at the same time as the nation experienced massive fear of the foreign, the alien. Until the late 1960's, a majority of those tried on subversive speech charges were either aliens or individuals linked with "alien elements" of the society. Relatively few First Amendment cases went to court in the Viet Nam protests of the late

1960's; protesters were children of the establishment, not foreigners. They were seen as individuals who had gone astray, but could (and probably would) move back into the mainstream of American culture. Unlike the defendants of earlier cases, their speech was not that of foreigners, seen as inherently suspect in terms of absorption into the American culture. Detailed arguments related to the legal doctrine of free speech cases and the relation of this doctrine to language concerns in general are reviewed elsewhere (Heath and Mandabach forthcoming). Most important for our purposes here is emphasis of the fact that the current trend in legal doctrine is to take certain political risks in order to insure freedom of speech, i.e. to move away from the past willingness of the courts to try inchoate-crime free speech cases. Arguments supporting this view maintain that freedom of speech should have a preferred position among freedoms because freedom of speech is a fundamental liberty, one necessary to insure individual self-expression and the development of individual potential. Legal doctrine since the McCarthy era has moved toward making a firm distinction between belief/opinion and forms of conduct, between expression or communication of ideas and action. In educational litigation, the same trend was reflected in Tinker v. Des Moines Independent School Dist. 393 U.S. 503 (1969), in which the majority decision stated that "state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students" (Tinker, p. 739). The Court specifically pointed out diversity as a way of enhancing the educational process:

> The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth 'out of a multitude of tongues, rather than through any kind of authoritarian selection' (Tinker, supra, at 512, quoting the court's earlier statement in Keyishian v. Board of Regents, 385 U.S. 589, 603, [1967]).

The Tinker case and others make it evident that in terms of achieving educational aims, the court is moving toward placing greater stress on the process of education than on its contents (Berkman 1970), and these aims are being interpreted broadly to provide what Justice Brandeis termed the final end of the state:—"to make men free to develop their faculties...." Whitney v. Calif. 274 U.S. 357, at 375 [1927]). These trends and aims seem to be in keeping with those espoused by current proponents of bilingual-bicultural education. Does this shift in legal doctrine then bode well for a return to an appreciation and tolerance of language diversity?

The answer is No. In law, doctrine is illuminated by history. An historical review of the social and cultural context of cases having to do with language in the broadest sense, ranging from free speech, to literacy laws, and the uses and purposes of language in education makes us aware that it is simplistic to define the status of English today in terms of only the few laws and cases related to language minorities per se which exist. Moreover, history helps us recognize the power of social and economic circumstances which forced the drastic shifts in attitude which occurred in the late nineteenth century and first half of the twentieth. Fear of a "foreign threat" was fed by racism, intense competition for economic survival and mobility, and two World Wars. To unify and conform seemed logical answers, and to do so through control by force of law became a strategy of state and local policy-makers. At the federal level, these strategies to restrict foreign languages were rejected; however, their philosophical assumptions of the links between language and behavior were supported in the free speech cases, particularly those of the World War I period. Currently, legal doctrine is questioning the bases of decision in these cases. The view

that law should control or restrict language in order to control behavior currently has little legal support. Repression of languages other than English and abridgment of freedom of speech have little legal sanction.

Yet many linguistic minorities, and some educators and social scientists argue there is repression. The legal history, however, does not show that this repression has a basis in law as,for example, denial of the civil rights of Blacks did before the landmark cases of the 1950's. It has not been the law which has repressed language diversity, but society. Therefore, the current shift in legal doctrine cannot be expected to be of much help in promoting bilingual-bicultural aims in the society. Observers of American society since Toqueville have noted the American tendency to conformity, to ask the question "what is expected of us?" Institutions have tended to move further than the law and to maintain that what is expected is promotion and maintenance of English. Restrictions on the use of languages other than English have been imposed through the unwritten laws of institutions. Laws perceived as violating basic national values, i.e. restricting basic freedoms, can be contested as unconstitutional; to contest unwritten laws or norms of behavior is much more difficult. We are left then with the historical fact that where there has been no policy, society has created an unwritten "policy" which is the legacy of English history. One observer has assessed the U.S. failure to enact a specific language policy as "one of history's little ironies" and suggested "no polyglot empire of the old world has dared to be as ruthless in imposing a single language upon its whole population as was the liberal republic dedicated to the proposition that all men are created equal" (Johnson 1949:118-119). The absence of compulsion has been an indirect compulsion for learning English. Haugen (1966) termed the driving force behind language shift "individual enterprise": if individuals or groups rejected English (or its standard variety), they handicapped themselves, because they limited their

chances for socioeconomic mobility and valuation as good citizens. And they have not had even "the inner consolation of feeling that they defied tyrannous authority" (Johnson 1949:119).

In its early period, the U.S. valued diversity of language and maintained the English legal custom of not regulating language officially or denying personal liberties in language. However, the late nineteenth century gave rise to promotion of a monolingual tradition and emphasis on standard English as the mark of reason, ethics, and aesthetics; the tolerance of diversity which had characterized the early national history declined sharply. An English-only, standard-English-preferred, policy was institutionalized though not legalized. Thus the status of English in the U.S. today is based not only on the British custom of no legal restrictions on language, but also on an intolerance to linguistic diversity akin to that which has been prevalent throughout British history. A recent study of language attitudes in Westernized nations of the world concluded that only the British still use accent to judge an individual's standing in the community (cf. Fowler 1965). The British maintain a chauvinistic and exclusionist pride in their language and its standard norm. In America, a society which has historically disclaimed class distinctions, linguistic snobbishness is perhaps more subtly transmitted than it is in England, but it persists nevertheless, and it persists as the major foundation of the status of English here. If the status of English had been achieved through law, methods of changing that status would be clear-cut. But the vision of English so widespread today is the result of our past, not our history.

J.H. Plumb, the British historian, has suggested a distinction between history and the past (1970). History is a discovery made through historians' attempts to learn the human story in its own terms and not for the sustenance of institutions, societies, or national images. As distinguished

from history, the past is a creation keenly linked in human consciousness with a sense of the future, with a sense of destiny. In this dynamic fashion, the past is created and recreated in the service of religion, morality, or the sanctity of institutions. Our language past--as opposed to our language history--has been used to provide moral lessons, to support current images of cultural needs, and to characterize the national past in terms of a homogeneity in values, goals, and experiences. That past is still being used to dictate both how speech communities should speak and what they should believe about what their speech can do.

That past is also being invoked to support a national language policy without consideration of the history of the treatment of language in federal law. Any proposal for a national language policy must be recognized as a decision to create laws to control an area of behavior never before under federal control. It is difficult to predict either public response to such a law or to the expenses involved in implementing and enforcing the shifts in structure and practices of institutions which will be necessary for conformity to such laws. Societal resistance could take the form of a severe backlash against ethnic and linguistic diversities. We know little about the differences between responses to federal anti-discrimination laws which are reversals or alterations of earlier laws (e.g., the Civil Rights legislation of the 1960's) and responses to laws newly created to control an area of behavior hitherto not covered in federal law. To be sure, responses will differ in accordance with the clarity of definitions of the categories of the discriminated, i.e., race, sex, age, nationality. Laws prohibiting discrimination on these bases have not had to deal extensively with issues of definition. In the case of language as a basis of discrimination, however, neither it nor its standards can be clearly specified. Dialect differences merge into language differences,

and the standards of clarity in language vary greatly from situation to situation.

It will be a difficult task to substitute historical fact for the created past as the basis of decision-making in language planning today. History makes us "see things as they actually were, and from this study to formulate processes of social change acceptable on historical grounds...." (Plumb 1970:137)—a challenge in our current assessment of the status of English in the United States.

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Footnotes

[1]A comprehensive history of language policies for the territories has not yet been written; for many areas, the history is scattered in sources available only in the territories (or former territories) themselves. For a brief summary of language policies in Puerto Rico and the Phillipines and comments on sources for language policies in these areas, see Zentella, and Beebe and Beebe in Ferguson and Heath 1980.

[2]Lau v. Nichols, 414 U.S. 563 (1974).

[3]Meyer v. State, 107 Neb 657, N.W. 100, at 102 (1922).

[4]Meyer v. Nebraska, 262 U.S. 390 (1923).

[5]An Act Requiring the Use of the English Language as the Medium of Instruction in All Secular Subjects in All Schools Within the State of Iowa, Chapter 198, § 1 (1919)

[6]An Act to Supplement § 7762 of the General Code . . . and to Repeal § 7729, Concerning Elementary, Private and Parochial Schools and Proving that Instruction Shall be in the English Language, Chapter 614 (1919).

[7]An Act to Declare the English Language the Official Language of This State, and to Require All Official Proceedings, Records and Publications to be in Such Language and All School Branches to be Taught in Said Language in Public, Private, Denominational and Parochial Schools; to Prohibit Discrimination Against the Use of the English Language by Social, Religious or Commercial Organizations; to Provide a Penalty for a Violation Thereof; to Repeal Chapter 249 of the Session Laws of Nebraska for 1919, Entitled 'An Act Relating to the Teaching of Foreign Languages in the State of Nebraska' and to Declare an Emergency, Chapter 61 (1921).

[8]Bartels v. Iowa, 262 U.S. 404 (1923).

[9]Compulsory Education Act (1922).

[10]Pierce v. Society of Sisters, 268 U.S. 510, at 535 (1925).

[11]An Act Relating to Foreign Language Schools and Teachers Thereof, Act 30, Special Session (1920), as Amended by Act 171 of 1923 and Act 152 of 1925.

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